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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,586	11/17/2000	Peter Worthington Hamilton	5922R2C	5737

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13
EXAMINER

CHANG, VICTOR S

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 08/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/715,586

Applicant(s)

WORTHINGTON HAMILTON ET AL.

Examiner

Victor S Chang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12,14-18,41-52,54-58,66,81,87,88 and 95-111 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12,14-18,41-52,54-58,66,81,87,88 and 95-111 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. The Examiner has carefully considered Applicant's amendments and remarks filed on 5/28/2003. Applicant's amendments to the Specification and cancellation of claims 13 and 53 have all been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Rejections not maintained are withdrawn.

Terminal Disclaimer

4. The terminal disclaimer filed on 5/28/2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Pat. No. 6,194,062 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 1-12, 14-18, 41-52, 54-58, 66, 81, 87-88 and 95-111 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The Examiner repeats (see section 4 of Paper No. 10) that throughout the claims there are many exactly or practically duplicated claims with slight difference, the Examiner strongly urges that Applicant consolidates these claims to avoid possible confusion in the event that there may be infringement issues.

For example, the independent claims 41 and 95 are virtually identical, except that claim 95, line 2, also expressly claims an apparently inherent element of "substantially all of", which is clearly encompassed by claim 41.

Also, claims 87, 88, 110 and 111 clearly fail to further limit independent claims 41 and 95, and appear redundant.

Double Patenting

7. Claims 1-12, 14-18, 41-52, 54-58, 66, 81, 87-88 and 95-111 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18, 38-55, 75, 80-81 and 86-102 of copending Application No. 09/716740. Although the conflicting claims are not identical, they are not patentably distinct from each other for the following reasons:

For independent claims 41 and 95, each of the claims 38 and 86 of the copending Application No. 09/716740 shows all the features of the instantly claimed invention, except the thickness of the wrap material, which is believed to be well within the skilled of the art. It should be noted that except the aforementioned thickness element, the instantly claimed invention would have been provisionally rejected under 35 USC 101 double patenting.

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This is a provisional obviousness-type double patenting rejection.

8. Claims 1-12, 14-18, 41-52, 54-58, 66, 81, 87-88 and 95-111 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No. 10/027613. Although the conflicting claims are not identical, they are not patentably distinct from each other for the following reasons:

For independent claims 41 and 95, claims 1 of the copending Application No. 10/027613 shows all the features of the instantly claimed invention, except the density of the protrusion, which is believed to be well within the skilled of the art. It should be noted that except the aforementioned density of protrusion, the instantly claimed invention would have been provisionally rejected under 35 USC 101 double patenting.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-12, 14-18, 41-52, 54-58, 66, 81, 87-88 and 95-111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur (US 2338749) in view of the admitted prior art.

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Wilbur's invention relates to wrappers of flexible paper or other equivalent sheet material (column 1, lines 1-3). Wilbur teaches that the invention can be embodied in a label, wrapper, envelope or other article of flexible sheet material intended for other uses (page 1, column 2, lines 34-37). Figs. 1 and 2 show that a permanently sticky or tacky adhesive 11 is coated in the pockets or recesses of an embossed web of sheet material (page 1, column 2, line 13, and page 1, column 2, line 53 to page 2, column 1, line 1). The ribs or elevations 12 and 13 serve to shield the adhesive coatings of the recesses or pockets against accidental contact with other objects (page 2, column 1, lines 6-15). The bonding is carried by pressing or crushing by finger pressure (page 2, column 1, lines 31-32).

For claims 41, 87, 88, 95, 110 and 111, it is noted that Wilbur lacks express teaching that the flexible sheet material is a storage wrap film with small resiliency (i.e., being conformable). However, it is noted that Applicant admitted that it is known art that sheet materials with clinging character (i.e., cling film) can be used to form a closure for a container (Specification, page 1, lines 18-26). Further, it is believed that a suitable small resiliency (i.e., being conformable) of the cling film are either inherently disclosed or an obvious optimization to one skilled in the art, motivated by the desire to reduce the material cost and to obtain a good wrapping (or conforming) property to preserve the sealed materials. As such, it would have been obvious to one of ordinary skill in the art to modify a cling film with Wilbur's teaching to form a clingless film with adhesive in the recess of an embossed film, motivated by the desire to prevent premature adhesion or cling (i.e., clingless) to an object, such as a container.

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For claims 2-5, 9, 42-45, 49, 96, 98, 104 and 106, Wilbur teaches that the bonding is carried by pressing or crushing by finger pressure, as set forth above. Further, it is believed that the finger pressure is inherently applied in a direction which is substantially normal to the sheet material. Additionally, a suitable amount of pressure to activate the adhesion and peel force after activation are believed to be either inherently disclosed or an obvious optimization to one skilled in the art, motivated by the desire to obtain a good bonding.

For claims 6-8 and 46-48, in the absence of unexpected results, it is believed that activating the adhesion by a suitable amount of tensile force is an inherent property to a cling film modified by Wilbur's embodiment.

For claims 10, 50, 97 and 105, it is believed that while applying finger pressure, a user inherently would have the ability to selectively activate the adhesion in discrete regions.

For claims 1, 11, 51, 81, 99, 102, 103 and 107, Applicants' admitted prior teaches that it is known art that a suitable wrap sheet materials can be used to form a closure for a container, as set forth above.

For claims 12, 52, 100 and 108, although Wilbur lacks a teaching of coating adhesive on both sides of the sheet material, it is believed that forming a double sides adhesive film is old and well known in the art of adhesive sheet, as evidenced by the teachings of Kovac (US 3819467), which teaches that a double faced tape seals to the inside of a wrapped frame (column 4, lines 4-9). As such, it would have been obvious to one of ordinary skill in the art to modify Wilbur's embodiment by coating adhesives on

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both sides, motivated by the desire to obtain a good seal around a wrapped container without loose film hanging away from the side of the container.

For claims 14, 53, 54, 66, 101 and 109, Wilbur expressly teaches that the adhesive is permanently sticky or tacky, as set forth above.

For claims 15, 16, 55 and 56, Applicants admitted that polymeric materials such as PVC, PVDC and PE are commonly used to form a cling film (Specification, page 1, 4th paragraph), which are inherently substantially translucent or transparent film materials.

For claims 17, 18, 57 and 58, although Wilbur lacks express teaching of the height of the elevation (or protrusion), the film being clingless prior to activation, the thickness of the adhesive and its resiliency, it is believed that these properties are either inherently disclosed, or obvious optimizations to one skilled in the art, motivated by the desire to prevent premature adhesion, as taught by Wilbur.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 703-605-4296. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

VSC
July 30, 2003

DANIEL ZIRKER
PRIMARY EXAMINER
GROUP 1300
1700

Daniel Zinker